REFLECTIONS ON THE PREPARATION OF THE NEW LABOUR CODE

by
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I.

The effective Labour Code of Hungary has come into force 16 years ago . It was mainly the changeover to the new system of economic control and management that accounted for its framing the principles system and the contents of the regulation of the right of labour. One of the decisive elements of the system of economic control and management was the recognition of group interests and their building into the regulatory system. Accordingly, special stress was laid on the creating of preconditions of the independent management of entreprises to which the Labour Code was also contributing by loosening the restrictions of the former rules and by enabling an internal regulation. And, against the power prevail of the employer's organisation the legislative regulation set as an aim to deepen the right of workers, to protect their interests more efficiently, and – in connection with it – extend the function of trade unions. Thus, in the prevailing law safeguarding of the workers interests is realized in the regulation of workshop democracy and, on the other hand, in the restriction of employer's rights (in building-in of legal securities). In case of individual legal injury of workers the bodies entitled to be a judge of labour question disputes make a decision about the legality of the employer's measures.

The direct and indirect forums of workshop democracy are destined for ensuring the possibilities of enforcement of the interests of the workers collectives. Within this the special literature attaches great importance to the collective labour contract which seems to be a suitable legal form for conflicting the interests within the organization and for effecting consensus – its subject being the stipulation of working conditions.

Prior to outlining the conception of new Labour Code in preparation it seems to be necessary to answer some pre-questions:

1 Whether the effective law and the prevailing system of the labour law regulation, resp., have complied with the requirements raised against the legal regulation of the social labour relations?

2 How does evaluate the public opinion beyond our frontier our effective labour law?

3 Whether the conception of Labour Code as generally outlined in the introduction is in conformity with the courses of the longe-range socio-economic development or whether it is necessary to elaborate a new conception corresponding to the development courses?

Ad 1 The evaluation of our effective labour law is being made difficult by the condition that stopping short, even occasional retreat of our system economic control and management and regulatory system have blocked the proper unfolding and interestedness of the independence of enterprises in the market-oriented and efficient production, and also, they have blocked the development of the internal system of interestedness of enterprises.

The fact that the aimed social effect of the labour law regulation failed to come about and was only realised in part, resp., can be attributed, to a great extent, to the shortcomings of our system of economic control and management as the law cannot take the place of them, on the contrary, it can only intensify or weaken their effects.

Taking now no notice of the breakings of the regulatory system, the concept of Labour Code was, in out opinion, in conformity with the principles of the system of economic control and management introduced in 1968. Its mistakes rather can be traced back to the inconsistency of realization of the conception of law as well as to the lack of thorough knowledge of social reality.

a) The principle of law proved to be right that two meeting points of the regulation – the legal and enterprisal levels – were elaborated. The principle, however, had not been carried out consequently. On the other hand, a wide range of provisions of law (even directives of ministers) were incorporated under the title „Rules relating to the labour relations" resulting in overgrowht of the regulation at ministerial level. On the other hand, development of the function of the collective labour contract was hindered by the fact that its meaning was incorrectly and narrowmindedly interpreted by the Minister of Labour and the Central Council of the Hungarian Trade Unions as well as by narrowing down its contents also by the advance of provisions of law at ministerial level. The amendment of Labour Code in 1979 has somewhat improved the situation developed in this way: the opportunity of regulation at ministerial level was restricted and the range of effect of the collective labour contract was intended to a part of the publicly financed institutions in the form of „Labour questions statues". However, no change took place in the understanding of the sense of the collective labour contract.

*b)*The law – as also reflected in its preamble – deliberately strived after restricting the possibility of the conflict of the employer's and worker's interests to the narrowest possible scope, by specifying the rights and obligations of the parties to labour relations. It called for ensuring the necessary independence of employer's organization in the employment of labour force, and, at the same time, provided for the safeguarding of the labour force as living human being and personality.

This protection embracing the individual is an essential part of each legal system. Therefore, the critical comments according to which the right

of labour is being condemned for its having been placed in the centre of the individual labour legal relation, are not well-established. Following from the personality character of the labour legal relation we are of the opinion that this legislation practice is to be followed in the future, too.

As far as the specification of the rights and obligations of the parties to labour legal relation is concerned, the prevailing law goes beyond the requested limit. It contains provisions to be regarded as cogent even in elements which are not justified by the interest of ,,national economy", and by which the enforcement of the interests of the parties to legal relations is decidedly hindered. Thus, loosening of the restrictions of the labour law regulation can be regarded as a significant task of the legislation.

c) In addition to the provisions of Labour Code aiming at the balance of interests the provisions of law cannot be neglected by the issue of which the legislator wanted to prevent the undesired processes resulting from the insufficiencies of the economic regulatory system and tried to "solve", by using the means of law, the problems following from labour shortage. Such were the prescribing of the obligatory labour forces mediation; the sanctioning of the workers who excercised their right of free notice several times a year; the forbidding of advertisements for employment; the binding to permission on the employer's part of an employment in the free time, etc. These provisions of law are typical examples for the phenomenon in which the legal regulation was used by the politics in the capacity of substituting means for filling-in of other means and thus leaves the "autonomous" nature of law out of consideration. Namely, the provisions of law referred to are opposed to the principles of Labour Code and, possibly, to its rules as well.

In the future legislation it should be opposed more successfully to the above-mentioned tendency since it upsets the unity of legal system and weakens the social effect of law.

Practically. a similar process can also be observed while following the development of the time labour legislation responsibility rules .At the time of coming into force of the Labour Code it still seemed that we succeeded to realize the balance of two significant means influencing the worker's behaviour, the incentive and the "penalty". Since that time this balance has been toppled. The worker's interestednes has not developed ro the extent as desired, on the other hand, in the last 16 years the responsibility rules have been made several times stricter although they enabled even in the original text of the law the inflicition of the most sever sanctions as compared to the Labour Codes of other socialist countries. The results of studying the worker's behaviours have revealed the realed the reasons of socially unfavourable behaviours. The measures to be taken to put an end to them cannot be substituted by responsibility sanctions, proved also by the fact that no improvement of the labour discipline was observed under the influence of the amendments of the provisions of law. Thus, this legislation tendency is reflecting an overemphasizing of the part of law injuring the law rather than doing credit to it as it lessens the efficiency of law.

d) The regulation of workshop democracy has been effected in conformity the new system of economic control and management, on the fundamental principle, that the strengthening of the interest of enterprises calls for increasing the safeguarding of its workers. interests, and the organizational (indirect) participation can more efficiently meet this requirement that the workers themselves making the best of the opportunities afforded indirectly for them. Upon such consideration the Labour Code has provided lots of rights for the trade unions by which the safeguarding of interest was mainly concentrated in the participation in the regulation of labour relations and control of decisions. The law deliberately did not connect the individual decisions with a previous participations right not to restrict by that the decisions of management.

The social routine, however, reflected the inefficiencies of the functioning of workshop democracy upon which the legislation reacted by extending the trade-unions rights (e.g. presciribing of the trade-union agreement by setting the legal practice individual decisions); by setting the legal practice onto a lower level; and by emphasizing the significance of the indirect workers. participation.

As a consequence of realization of the fact that a successful functioning of the workshop democracy is the function of a great many factors, and the legal regulations only represents a single element of these factors; and considering that the rights provided by the provisions of law are not satisfactorily exercised by the trade-union bodies, the in these days statements are contained in the political documents according to which a further widening of the trade-union rights is not desirable, on the contrary, exercising of the existing rights shall be improved.

Evaluation of the legal regulation of the workshop democracy is influenced by the fact that the provisions of law were modified several times as compared to the orignal text of the law, and, on the other hand, in the possession of a great many new achievements of the social sciences the law is also value differently than at the time of its coming to life.

da) In our opinion, the legal regulation has undertaken an exaggerated share in the shaping and aiding of the workshop democracy. The prevailing provisions of law contain immense overlappings and contradictions. The competition of Labour Code and the Act on State Enterprises is not favourable to developing a uniform right-observing behaviour, either. In my opinion, this unfavourable position would still be worsened by separating the institutions of workshop democracy and arranging them in separate branches of law depending on whether they are serving for the participation in the management or for the safeguarding of workers' interests as some views in the literature are proclaiming.

db) The provisions of law regulating the workshop democracy have given rise to rightful criticism also on the account that they are unfoundedly differentiating in the definition of rights, that is, they are providing less possibilities for the participation in the sphere of the administrative bodies than in the economic organizations.

de) The legal regulation relating to the workshop democracy is trade-union-centric also today although some efforts for increasing the direct participation rights can be noted. Apparently, this purpose has been set by the Act on State Enterprises but, apart from expressing an opinion on the manager, the duty of co-operation as well as the duty of internal regulations of the spheres of authority, no rights on the merit have been given to the workers' groups. Owing to their nature and emphasis the direct participation rights as defined by the decision of MT–SZOT (Council of Ministers – Central Council of the Hungarian Trade Unions) on the workshop democracy are not suitable for creating the substantial function of workshop democracy and the possibility of enforcement of the workers' interests. (The only exception is the latest regulation on the expressing opinion on the managers.)

e) The grave social problems relating to the payment of labour can be brought into connection mainly with the unsolved state of interestedness as well as with the principles and way of the regulation of wages and earnings. In the regulation by the right of labour the change can be regarded as favourable that also the social usefulness of labour is prescribed by the law as the basis of payment. Another significant reform in the Labour Code was the increasing of the part of the collective labour contract the regulation of questions connected with payment. On the other hand, the Labour Code can seriously be blamed for excluding the possibility of labour question disputes in case of injuries caused by the fixing and alteration of the performance requirements. By this regulation the worker has become surrendered to the management in the matter concerning him most seriously. The defencelessness is still increased by the regulation only ordering obligatorily the hearing of trade union.

As far as the system of payment by results is concerned a great many problems have been disclosed by the politico-economic and sociological literature. Among them significant are the settling of the performance requirements and the wages connected with them. And, the conclusions drawn from sociological studies bring into question even the advantages of the individual form of payment by results. Namely, this form of payment hinders the development of the rise of the feeling of belonging together, the unity and common activity; and increases the tendencies of disagreement.

f) From the point of view of the workers' legal and interests protection the norms of law containing the rules for deciding the labour question disputes are of the highest importance. It is all the more conspicuous that neither the legislation nor the research of labour question paid sufficient attention to this important field.

The main insufficiencies of our prevailing rules can be summed up as follows:

– The law defines the concept of labour question disputes in a single competence rule which cannot be regarded as a satisfactory definition of a concept.

– The law narrows down the possibility of the access to debating forums to legal disputes thus shifting the handling of conflicts resulting from a mere injury of interest to the forums of workshop democracy.

– Probably the most serious insufficiency of the prevailing Labour Code is that it does not provide any proper possibility for conflicting the interests and achieving consensus in case of collective conflicts, that is, it does not recognize the existence of collective labour question disputes and does not contain any regulations how to solve and judge, resp., them.

– In both the special literature and the legislation it is still wanting the working-out of a uniform and complex procedure of labour question.

If summed up the answer to the first question it can be stated that the fundamental principles of the prevailing Labour Code were in conformity with the social and economic changes taking place in 1968: these principles were, however, partly not carried into effect consistently and partly it was attempted to carry them through by unproper and insufficient legal regulation.

Ad 2 In the professional public opinion abroad generally a favourable apprehension of our effective rights of labour can observed reflected in the special literature, reports and contributions at international congresses and other conferences.

Especially highly valued are our provisions regulating the enterprisal collective labour contract and the right of objection on the part of trade unions. Although the collective labour contract of entreprises is a legal institution regulated in almost all socialist labour codes its part in regulating the labour relations is elsewhere less significant which partly can be attributed to the system of economic control and management itself, further, to the fact that the collective labour contracts also include undertakings of moral and political nature what is weakening the legal nature of the institution. On the contrary, in the capitalist legal systems the collective labour contract represents the main form of the regulation of labour relations.

The provisions enabling for the workshop body of trade union to raise objections is also regarded by us as "successful", particularly with regard the insufficiencies of the provisions of law regulating the labour question disputes. Namely, the right of objection gives an opportunity to the workshop body of trade union to exercise protection of both the individual and the collective, furthermore, it is to its advantage that it does not narrow down the protection to the cases of grievances but extends it to further spheres. Thus, the right of trade-union objection is somewhat correcting the insufficiencies of the regulation of labour question disputes.

Notwithstanding, the right of objection did not fulfil the hopes placed in it the reasons of which lie with the factors determining the general level of workshop democracy and with the directive formulated by the higher bodies of trade unions for the workshop bodies of trade unions and in which the bodies entitled to raise objections were cautioned.

In addition to the above viewpoints in the foreign legal literature can be met according to which responsibility sanctions are unduly serious

(especially the disciplinary sphere of authority is regarded as too wide) and they also criticize the inconsistencies of our hierarchy of the source of law. (B. Cardani – G. Lipschitz: New Labour Code of the Hungarian People's Republic, Milano, Dott. A Giuffre Editors, 1981.) The assessment of the authors is all the more remarkable because the Hungarian labour legislation is being analysed in a comparative legal approach concerning the labour law of all socialist countries. However, their summed up opinion is that our labour legislation codification in 1967 is to regarded as an original and modernizing solution.

Ad 3 As far as the creating of the conception of the labour in preparation is concerned, the position of the Central Committee of the Hungarian Workers. Party of April 17, 1984 on the tasks of further development of the system of economic control and management is of the greatest importance. According to the standpoint our system of economic control and management has to be further developed, renewed on the basis of proved principles. From the standpoint it appears that our system of economic control and management will be resting in the future, too, on the connection of the national economic plan and the goods and money relations as well as on taking into consideration the active part of market; and it will enable the independent, responsible enterprisal decision-making. Also, it will contribute to the development of initiative and enterprising abilities.

Further on, the document of Party (HSWP) expresses lots of requirements which are of decisive nature as far as the regulation of labour relations is concerned; such are the improvement of the system of interestedness within the politico-economic regulation; the perfecting of the internal system of interestedness of the economic units; the modification of the regu lation of wages in the interest of the performance principle coming across as well as the development of the socialist democracy.

From what has been said above the conclusion can be drawn that the principles of further development do not mean any radical departure from the reform of 1968. It should follow from this that the effective Labour Code based on these principles could be maintained by making minor amendments. Notwithstanding, I am of the opinion that in some questions the Act should undergo essential changes.

II

1. The innovation is principally justified by the fact that the Hungarian socio-economic conditions of today have proved ti be significantly different from those in the mid -sixties. Furthermore, we have deeper knowledge of the social processes taking place in the economic life.

Under the present narrow circumstances the demand for a reasonable and efficient employment of labour force has been multiplied. Due to being inclose connection with the foreign markets and placing of our products having become more difficult, a close following of the market demands have been put into the centre of economy requiring a considerable and so far

unknown adaptability form the enterprises. We shall be needing an attitude comprehending the changes as natural processes.

The considerable changes we are looking forward to cannot be realized without the workers closing up and without their activity.

In the world of labour, however, symptoms of crisis can be observed. Keeping back of the performances, the high ratio of absences, the escaping onto the sick-list, etc. — all this is showing that the relations within the work organizations are charged with heavy conflicts and our progress is unthinkable without their renewal.

Which are the main reasons of the crisis of working process and what kind of a part can be undertaken by the labour right regulation ?

In establishing work relations the workers are motivated by the demand for satisfying their various needs. Such are: the earnings, the physical working conditions, the duration of working time, the safety of performing the work, the conditions of instruments of labour, etc., as well as the internal incentives, e.g. the autonomy enjoyed while doing the work, the possibility of becoming promoted, the interesting and responsible work.

If the demands raised to the work are satisfied, generally the workers would fulfil the requirements specified by the enterprise. Should, however, even their basic needs be satisfied to their disadvantage and should this grievance be proving lasting without the workers having suitable means for enforcing their interests, then they would express their dessatisfaction with the work by displaying, in various ways, their opposition as e.g. by leaving the work, absence keeping back the performance, etc.

Among the demands of workers raised to the work a prominent place is taken by the achieving satisfactory earnings which, still for a long time to come, will remain as a decisive and fundamental factor in the forming of the workers. behaviour. On the other hand, fulfilling of this fundamental demad is coming up against lots of difficulties. Among these hindering factors can be specified as follows: the central wages and earnings regulation, the considerable dependence of the enterprises from the economic control and management, the interstedness of managers being unsolved, etc.

Thus, the first step for the fighting down the crisis of the working process is awaited from the economic incentives, they have to clear away all the difficulties, being an obstacle to achieving a proportinal with the performance wage.

And, the legal regulation based on a suitably created regulatory system should aim at the strengthening of the effect of the regulatory system, the amendment of the system by creating mechanisms suitable for the development of ability of the workers. groups for enforcing their interests, within the labour organizations.

Any kind of the change of mechanism means an attempt to rearrange the power and the interests.

The experiment of 1968 did not bring about the required outcome but social were accumulated by it the taking use of which could assist in avoiding lots of unforseeable difficulties at a repeated starting.

It is the task of the new Labour Code – in my opinion – to contribute to the rearrangement of power relations within the working process in accordance with the further development of the system of economic control and management. (The employer's power within the working process is represented by the means officially granted to the representatives of management and direction; and the power of the executive bodies is determined by their ability of enforcing the interests.[1]

The anatomical analysis of the working process has discovered a regularity, so far unknown and seemingly contradictory: the economic regulatory system and the legal regulation, in themselves, will never be able to create an identity of interst in the work organizations, on the contrary, the identity can only be developed and created again and again by the realization of the ability of the enforcement of interests acquired by the exercise of common actions.

Consequently, it seems to be essential that the new Labour Code, by recognizing and regulating the collective labour question disputes, contributes to revealing, assessing and squaring the conflicts of interests. By doing so the right of labour could contribute to the formation so the social consesus which, on the basis of the satisfaction of interest, would establish unity of action within the work process.

Thus, the conception of the so called collective right of labour as the law of the conflict of interests and harmonizing is not at all unfamiliar with the socialism, on the contrary, its proper and moderate regulation may contribute to the development of social conditions in the work organizations. The institutional promotion of the conflict of interests does not mean any political danger, quite the contrary, the concealment of conflicts and the lack of their knowledge may lead to the development of tensions of social proportions.

2. Recognition and regulation of the collective labour question disputes alone, however, is not sufficient for realizing the indicated goal as within these disputes only the problems representing the direct object of the arisen conflicts can be solved. The actual source of tensions is, namely, the distribution of power within the work organization upon which the formation of the workers position is depending.

In the last years the social sciences have comprehensively proved that the exaggerated proportions and centralization of our enterprizes as well as the unreasonably long and bureaucratic chain of directing are accompanied with harmful effects among which the consequence cannot be neglected that the organization in its executive core does not provide any possibilities of action for either the management or the workers.

The new Labour Code should support the social process which has begun as the correction of this unwanted situation partly under the influence of the state and Party decisions and partly on the basis of the spontaneous initiatives of those exercising the executive activities.

As such positive change it can be regarded the further development and democratization of the appointment of leaders. In this field there are

still lots of opportunities from the appointment of leaders to the self-management, particularly in case of small enterprises.

We should understand, however, that no changes that can be induced in the management of enterprises can substitute the wider possibilities of action required in the executive activities.

The identity of interests and action with the in enterprise cannot be realized merely from above. For this reason it is required that the worker is active in the process of productive work itself; and that he would take part in the management activities directly connected with the executive work, as well as in the co-ordination and control of the work.

For this purpose the so called autonomous (self-governing) groups have come into bing in the highly developed capitalist countries; established voluntarily by those perfoming identical work activities, and their functioning is accompanied by extremely favourable economic and social effects.[2]

The members of autonomous groups do not wait for instructions from the management of enterprise but they take the initiative themselves spontaneously. This has a positive effect on the development of the productivity of labour, and diminishes the inflexibility of the enterprisal organization. Another positive social effect of the functioning of autonomous groups is that it increases the psychical relation among the workers.

The spontaneously active working members of workshop or section are proud of their work as there is the chance in it for taking initiatives and for influencing the decisions belonging to their sphere of activity, and they are free to choose their own methods of direction and management.

According to the special literature of Japan this is one of the main scources of the particularly high attitude to work among the Japanese workers and employees.[3]

Also in Hungary similar favourable experiences can be noted within the scope of the new labour forms and small enterprises, resp., even if there are some negative features. Among those co-operating in the work activities the internal hierarchy is wanting. The only person who performs duties that can be ragarded as those of a leader is the so called common agent. His decision-making rights are difference from the classical decision practice of those in charge of running the production: he has equal right of voting with the other workers participating in the undertaking. Any one of the members of the group performs any possible kind of work, consequently, they have the same position of negotiations. Any difficulties arising in the work are solved collectively.

Thus, in the scope of these working forms the labour division and specialization relations do intensify the tendency of becoming homogeneous of the possibilities of action which potentially may lead to minor inequalities of the ability of the enforcement of interests. Under its influence not only the work tasks of the workers will grow richer but the co-operation culture has also begun to develope.[4]

The process as outlined above can also be noted within the work relation with some of our enterprises.

Thus, another main task of the new Labour Code in preparation should be – in addition to the regulation of the collective labour question disputes – to support this experiment which is the greates timportance from socio-economic point of view and to contribute to its development.

Surely, the legal regulation should carefully deal with the „settling" of this question as an unreasonable regulation could paralyse the autonomous functioning of groups.

The internal regulation of the work organization could contain provisions for the legal relations related to the autonomous groups.

For the disputes arising between the employer and the group the provisions of collective labour question disputes could apply.

3. In the future, in the development of the sources of law the proper principle should consistently be realised that the regulation is based on two pillars: the statutory regulation and the internal work organization regulation. The possibility of regulating by directives of ministers and orders of under-secretaries of state should be brought to an end as they are violating the principles of our legal system underlying the constitution.

In relation to the internal regulation of the work organizations it seems that several modifications should be effected.

a) The internal regulation forms should be reduced.

b) The opinion is more and more generally accepted that the possibility of self-regulation is also existing within the administrative bodies and the judiciaries. In the reality there is no substantial reason which would speak in favour of the maintenance of the present ambiguous situation. The nature of executive power – separating this kind of labour relations from the other labour relations – consists in the meaning and confidential nature of the work to be done as well as the speciality of the obligations.

These characteristic features, however, do not preclude the possibility of internal regulation or, actually, their usefulness. It is therefore reasonable to extend the collective labour contract regulation to the work relations relating to the administrative bodies and the judiciaries.

c) Parallel with the reduction of the levels of the provisions of law, it is necessary to reduce the number and contents of the legal norms. In conformity with this and following from the new conception of legal regulation the sphere of questions capable of being regulated by collective labour contracts should be expanded. The Labour Code should enable for the parties to the collective labour contract to regulated any questions relating to the work relations which are not regulated by provisions of law; the regulation, however, may not be contrary to the provisions of law and may not be opposite to the general principles as defined in the Labour Code.

In case of a dispute relating to concluding collective labour contracts, should the parties not reach an agreement in the meaning of any provision of the collective labour contract, one should proceed according to the provisions relating to the collective labour question disputes. The same

apply for the case if any workers' group gives notice of an injury of interest against the contents of a draft collective labour contract.

4. The contents of the legal regulation relating to the trade unions grow out of the scope of Labour Code, therefore, I agree with the literary views according to which the making of a separate act is suggested for the trade unions. Should this suggestion be accepted, in the Labour Code the rights of the workshop bodies of the trade union would be given place in relation with the safeguarding of interests and representation of interests of the workers as well as the obligations of employers connected with same.

5. The most popular legal from of establishing labour legal relations is the labour contract and I recommend to maintain and further develope it for the new Labour Code, too. The solutions recommended for the making the interests conform are satisfactorily completed by the labour contract in the way that it enables the employee to fulfil his individual demands in the labour legal relation. However, in the conception of today only limited possibility is provided for this by the labour contract, therefore, the freedom of parties establishing labour contract shall be increased in laying down the labour conditions. This calls for revision of the cogency of the provisions of the right of labour and for the narrowing down of the cogent provisions into the reasonable scope. Further, it seems to be necessary to accept and regulate a general principle enabling a departure from the provisions relating to the labour relations if the legal positions of workers is not injured by it. By this modification the contents of legal norms would mean the minimum of rights and of the labour conditions, resp., in a wider sense which is due to any worker and more favourable conditions than that could also be stipulated by the collective labour contract and the individual labour contract.

In addition to such understanding of the freedom of contract special conditions could be contained in the labour contract such as provisions for the duration of working time, appointment, part-time working at home, working place, the nature of work, stipulation of a fee in harmony with it, etc.

An exception to this would mean, naturally, the rules of responsibility as well as the rules of labour question disputes.

As another significant step the Labour Code is that provides the freedom of choosing the category for the parties for the case of concluding a contract aimed at performing work. Also, the proposal should be considered that the law should involve provisions for some denominated forms of atypical work relations such as commission for continuously performing work and undertaking, resp.[5]

Should the above proposal be accepted, the autonomous groups recognized as well as the restrictions of the regulation of wages loosened, much looser and more flexible possibilities would open up for doing the job which could better provide for making the different interests conform, and thus efficiency of the functioning of the labour organizations would also be increased.

In filling the leaders' spheres a much larger part should be offered for the election at both the lower, middle and upper levels of the labour organizations. By this alteration the process could be encouraged that the leaders' positions would be filled with „natural leaders" who, upon their personality marks are suitable for performing the duties of leaders.

6. Under the effective law of Hungary the questions of modification of the labour contract are contemporarily regulated, with view to the interrests of parties in the way that a modification can only be carried into effect by mutual agreement, and, in the interest of keeping the working process undisturbed, exceptions are laid down according to which, upon the instructions of the employer, the worker is obliged to work – temporarily – also under conditions different from the contract. Thus according to the Labour Code the enforcement of the employers' power is only made possible for the solution of emergencies, otherwise wide varieties of settling the interests are offerend for the parties in the questions of modification.

The cases becoming to light in the labour question disputes, however, are revealing heavy conflicts in connection with the modification of contract and they are indicating that, instead of arranging the interests, the question of modification is often settled on the basis of power positions. It is not seldom even the violation of rights in the sphere of the application of these rules.

For all that, the leaders are not satisfied with these rules as – according to them – they do not offer for them due freedom in the labour force economy. They are of the opinion that the workers are not willing to take into consideration the interests of employers in case of the necessary alterations.

In short, which course should be taken by the new Labour Code in order to solve the indicated problems?

In my opinion, the modification of work relations by mutual consent should be maintained .The rules should be built on theoretically well established concepts putting an end to the present problems of statutory intepretation.

It should be taken, however, into consideration that the eventualities of the conflict of interests in the sphere of the modification of contract cannot be prevented by the legal regulation. In this field, a positive course of alteration can only be awaited from the development of the ability of workers to enforce their interests and from the process of arranging the interests becoming an everyday routine.

The functioning of autonomous groups where the barriers raised in between the spheres of activities are broken down by the workers themselves could significantly contribute to the reduction of conflict situations. Moreover, it is necessary to gradually put an end to the exaggerated specialization and, in line with it, to allocate in the labour contract a wider scope of activity instead of a narrow sphere of activity. It is, however, a feasible arrangement even nowadays to contract several spheres which, by proper

interestedness, could assist, to a great extent, in making the employment of labour force more flexible.

7. The fundamental principles of our rules regulating the termination of labour relations are still acceptable. The effective rules prefer the termination by mutual consent and the transfer which means an exceptional case of it, at the same time, by building in guarantee provisions, they render possible for both parties the termination of labour relations by notice. Furthermore, it is a substantial element of this system that the termination immediately effective – by one-sided statement – is only permitted by the law exceptionally, in specially regulated cases.

The rules partly departing from the above are relating to the labour relations established for a definite time, the labour relations with private employers as well as definitie scopes of activity of municipal services.

In these days the opinion is repeatedly raised as a criticism of our effective law according to which the labour question rules and the Courts of Labour are hindering the enterprises in terminating the labour relations of the workers becoming for them unnecessary.

In this question we are of the opinion that our economic incentives do not nowadays make the enterprises interested in the effective employment of the labour force or in parting with their workers having become unnecessary. On the contrary, the economy of scarcity is characteristic even for the labour force economy, inevitably inducing for the accumulation of reserves. Thus, the well-known fact – that the employers cannot give their workers notice even in justified cases – is not caused by the norms of the right of labour.

Accordingly, the termination system without any reasoning as a proposal shall be rejected. The Hungarian legal literature has definitely refuted the possibility of the application of this system.

After this, our codification had to choose among two possibilites depending on which method proves to be more suitable for the reasoning of the employer's notice.

The one possibility is the maintenance of the present system in which the law does not specify itemized causes but it stipulates for the duty of reasoning. It is proved by practice that this system is approved and is suitable for taking into consideration the substantial interests of the parties.

The other possibility, which could be followed by the codification, is the regulation of the dismissal notice system bound to itemized grounds on the side of employers. The advantage of this system is that it becomes clear to the worker what are the conditions he can reckon with the termination of the labour relations, and the employer would also be informed about the reasons the legislator recognizes as the ground of notice. Herewith the number of notices qualified as unlawful due to unsatisfactory reasons could be reduced. On the other hand, it is a disadvantage of this system that due to the versatility of life new reasons may arise which hardly or not at all can be involved in the taxation of law.

At the same time, the legislator should he choose this system should reckon with the resistance of employers as they probably would find a

narrowing of their possibility of dismissal notice in the dismissal notice system bound to itemized reasons.

I am of the opinion that the binding of the worker's dismissal notice to reasoning is even in the future not permissible. And the new Labour Code should disregard the establishing of sanctions for the repeated notices on behalf of the worker. The provisions of law establishing these sanctions are opposite to the fundamental princples of our legal system and even to the Labour Code itself, and at the same time, they only mean a surface treatment of this unfavourable phenomenon as they are not suitable for putting an end to the reasons of it.

It follows from the above that I do not regard as necessary any conceptional change in the system of termination of the labour relations. The present system is suitable for enforcing the interests of parties. At the same time, even in this sphere the legal regulation is unable to put an end to the possibility of the conflict of interests if one of the parties is interested in maintaining the labour relations while the other in the termination of it.

The legal regulation should look after thet only an objective established employer's decision could be accompanied with the effect of the termination of labour relations, and that the worker deprived of his labour relations is not left to himself. However, as far as the solution of the latter task is concerned a more significant part than the one of law falls on the organizational activity of the states as well as on the organization of the vocational training and further training system, resp., of the enterprises. In this field the legal regulation has made the first steps in order to create the employment service and by the regulation of retraining allowance. Against the unfounded termination of labour relations the new law could more effectively accept the challenge with proposed possibilities of the enforcement of interests of the workers.

8. In developing the worker's responsibility rules I consider the changing of approach as the most significant; the recognition of the fact that the legal responsibility can only fulfil its social part together with the suitable interestedness. A suitable interestedness and interest enforcing possibility can develope the internal demand of disciplined work in both the individual and collective. To this the responsibility provisions in the labour relations can only be functioning as a complement. Accordingly, our disciplinary responsibility provisions are too severe and complicated.

In my opinion, the new Labour Code should make the legal rules of disciplinary responsibility more simple.

The rules of the worker's financial responsibility are basically proper. However, the modification of the rules relating to the responsibility of workers in the trade and stores for the lack in inventory should be considered. It is proved by pratice that these rules did not work. And, the functioning of new operating forms lead to the conclusion that the financial incentive is even this sphere more useful than strict rules of responsibility.

Furthermore, I propose to put an end to the possibility that it comes to a simultaneous application of responsibility sanction and that for da-

mages against the worker if he, due to the wrongful injury of his duties following from his labour relations, has caused damages. This possibility may result in the application of too severe sanctions and hereby it may endanger the succeeding of the purpose of responsibility.

The rules of the employer's responsibility are up-to-date and satisfactory. The insufficiencies of the functioning of these rules may partly be led back to reasons of consciousness. By reasons of consciousness I understand that the leaders proceeding on behalf of the employer hardly recognize the responsibility of the employing organization in the case when the damage (e.g. accident) was not caused by the wrongful behaviour or negligence of any of its workers. Namely, the responsibility without considering culpability is foreign from the responsibility concept existing in the general consciousness which is always looking for the culpability behind the responsibility. In addition to the consciousness reason the functional disorders of these rules have still lot of factors the revealing of which would exceed the scope of this paper. However, it is in any case justified to conduct further studies as the high number of factory accidents and the tardiness of establishing the responsibility for the accidents are even today a neuralgic point of our society.

9. As it has emerged from the assessment of the effective Labour Code, significant alteration is justified in the section regulating the labour question disputes.

From the point of view of advancement it is essential to elaborate the general concept of the labour question dispute extending to any category of dispute. It seems to be obvious to start from the dispute as the conflict situation, and to apply the conceptual elements of dispute for determining the concept of labour question dispute.

Another significant task would be to find a solution that the possibility of decision of the forums proceeding in labour question disputes is not narrowed down to the ruling upon the questions of law but, on the contrary, these forums should have possibilities for treating and solving the conflicts of interests, too.

Under our present socio-economical conditions it seems to be essential to recognize the collective labour question disputes as well as to regulate the ways of their solution and judgement, resp.[6]

Finally, it is necessary to elaborate a uniform and complex labour question procedure and to regulate it by law.

FOOTNOTES

[1] *Makó*, Csaba: The working process and the social consensus. Budapest, 1983. Manuscript, p. 184.

[2] The subject of the groups' activities are generally determined mutually with the shop-foremen and thereafter the groups make independent decisions on the working processes and their distribution. The groups are mainly dealing with the questions of efficiency, labour health regulations and quality. Their head is appointed by the members of the group. For the detailed description of the functioning and results of the autonomous groups in Japan see *Makó*, Csaba: From the Taylorism to the work organization reform. Budapest,

1982, manuscript. A similarly positive assesment about the activities of the autonomous or semi-autonomous groups can be read in other highly developed capitalist countries, especially in the Scandinavian countries. See *Szamuely*, László: The tendencies of social development in the highly developed capitalist countries. „Valóság", No. 7, 1980, pp. 1 to 20. As the nature of this process the author finds that the industrial organization complies with the present labour force and the social conditions of today: as opposed to the traditional, technical and bureaucratic methods of work organization where the labour force had to adapt himself to the organization.

[3] *Vogel*, E. F.: Japan as No. 1 (Lessons for America). *Tut* Books, Tokyo, 1980, p. 145. Quoted by *Makó*, Csaba: From the Taylorism to the work organization reform, Budapest, 1982. Manuscript, p. 212.

[4] The assessment of Csaba *Makó* are supported by sociological studies. *Makó*, Csaba: Working process and social consensus. Budapest, 1983. Manuscript, pp. 347–348. Further favourable features are revealed about the functioning of the enterprisal economic working pools by *Román*, Zoltán: Socialist enterprise and enterprisal economic working pool. "Társadalmi Szemle", No. 6, 1983: pp. 69 to 78.

[5] *Lehoczkyné Kollonay*, Csilla (Mrs. Lehoczky née Csilla Kollonay): Content and form questions of the regulations of the secondary employment, supplementary occupation and other legal relations aimed at performing work with view to the labour rights questions arising with the new undertaking and employment forms. (Preparatory study for a longrange labour rights regulation.) Budapest, 1983. Manuscript, pp. 8 to 10.

[6] Also, according to the standpoint of György *Kiss* it is necessary to regulate the collective labour question disputes and, on the basis of it, to classify the labour question disputes into individual and collective labour question disputes, resp. However, instead of the twins interests' dispute – legal dispute, as the basis of differentiation the author proposes to accept the circumstance whether the dispute occured during the decision mechanism in question or after the given decision. *Kiss*, György: Some problems of the labour question dispute and the labour rights procedure as reflected in the codification of Labour Code. Budapest, 1983. Manuscript.

К ВОПРОСУ О ПОДГОТОВКЕ НОВОГО ТРУДОВОГО

ИДА ХАГЕЛЬМАЙЕР

Работа состоит из трех частэй. В первой части дается оценка концепции и правилам действующего венгерского Трудового кодекса. Во второй части дается сводная оценка зарубежным отзывам о венгерском Трудовом кодексе. В третьей же части зарисовывается концепция готовящегося нового Трудового кодекса.

Согласно мнению автора задача нового Трудового кодекса сводится к тому, чтобы в соответствии с совершенствованием системы управления хозяйством он способствовал перестройке властных отношений внутри процесса труда. При этом важное значение придается юридическому признанию и регулированию коллективных трудовых споров, а также поддержке так называемых автономных групп, в рамках которых трудящиеся принимают участие в руководстве, непосредственно связанном с исполнительной работой, в координации работы и контроле над ней. В дальнейшем предлагаются изменения в системе источников трудового права, в юридическом регулировании деятельности профсоюзов, в установлении и прекращении правовых трудовых отношений, а также в правилах ответственности.

„GEDANKEN ZUR VORBEREITUNG DES NEUEN ARBEITSGESETZBUCHES"

IDA HÁGELMAYER

(Zusammenfassung)

Der Artikel besteht aus drei Teilen:

Der erste Teil wertet die Konzeption und Regeln des wirksamen ungarischen Arbeitsgesetzbuches. Der zweite Teil enthält eine zusammenfassende Wertung der Resonanz unseres Arbeitsgesetzbuches im Ausland. Im dritten Teil wird eine Konzeption für das neu geplante Arbeitsgesetzbuch dargelegt.

Nach der Meinung des Verfassers hat das neue Gesetzbuch die Aufgabe, in Übereinstimmung mit der Weiterentwicklung des Wirtschaftslenkungssystems zu der Neuregelung der Machtverhältnisse innerhalb des Arbeitsverfahrens beizutragen. Als dessen wichtige Mittel bezeichnet der Verfasser die rechtliche Anerkennung und Regelung der Arbeitsdiskussion, sowie die Unterstützung der sogenannten autonomen Gruppen, in deren Rahmen der Arbeiter an der unmittelbaren Produktionsleitung, beziehungsweise an der Koordination und der Kontrolle der Arbeit unmittelbar beteiligt ist. Weiterhin werden Vorschläge im Artikel zu Änderungen in der Gestaltung des Rechtquellensystems des Arbeitsrechts, in der Rechtsregelung bezüglich auf die Gewerkschaften, im Zusammenhang mit den Regeln der Gründung und Aufhebung des Arbeitsverhältnisses, sowie in den Regeln der Verantwortung, gemacht.